

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.92 OF 2004

IN

ARBITRATION PETITION NO.259 OF 2003

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Dr.Francis Pelagio Candes ...Petitioner

v/s.

Dr.(Mrs.) Kalpana D. Velaskar ...Respondent

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Mr.H.S.S.Murthy for the Petitioner.

Mr.Satish Shah i/b Dahibawkar & Co. for the
Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 5TH MARCH, 2007

P.C.:

1. By this petition the Petitioner alleges that the

Respondent has willfully and deliberately disobeyed the order dated 18-6-2003 passed by the court in Arbitration Petition No.259 of 2003. That order was passed by consent of parties. According to the Petitioner, by order dated 18-6-2003 the Receiver was appointed on the business of the firm. The business of the firm was running a Blood Bank. The Receiver was directed to call bids from the partners of the firm namely the Petitioner and the Respondent for the purpose of fixing royalty. The highest bidder amongst the parties was directed to be appointed as agent of the Receiver. The agency agreement was to be executed on usual terms and conditions in favour of the highest bidder. The successful bidder was to carry on business of Blood Bank on the basis of licence issued in favour of the firm. But the successful bidder was to produce before the Receiver within a period of four weeks a licence obtained by the successful bidder in his own name. It was provided that the partner who was not the successful bidder shall issue a no objection certificate for obtaining necessary licence for running the blood bank. Pursuant to this order a meeting was held on 23rd June, 2003 before the Court Receiver. At that meeting parties were permitted to give bids. The

highest bid was given by the Petitioner for Rs.3,50,000/- per month. The highest bid of the Petitioner was accepted. He was directed to deposit the amount of royalty on or before 5th July, 2003. He was also directed to deposit the royalty for the period of three months at the time of signing agency agreement.

2. It appears from the minutes of the order that the Respondent was present at the meeting along with her advocate and after the meeting was over and the bid of the Petitioner was accepted, after taking instructions from the Respondent, the advocate appearing for the Respondent stated that after the highest bidder deposits the amount of royalty as stated above, the Respondent will issue no objection as per the order of the court. The Petitioner complied with the order of the court. After complying with the order, a letter was written on behalf of the Petitioner to the Receiver dated 19-8-2003 stating therein that the Petitioner has complied with the order and therefore, the Respondent should be asked to issue no objection certificate. The Receiver, therefore, wrote a letter dated 8-9-2003 to the advocate for the Respondent enclosing

a copy of the letter received from the Petitioner and requesting the advocate that he should instruct his client to issue no objection certificate. Nothing was done by the Respondent. Therefore, a notice was addressed to the Receiver dated 28-4-2004 by the Petitioner pointing out this fact. It was made clear that the highest bidder/petitioner has approached the Licencing Authority for licence, but the Licencing Authority insists that before issuing the licence in favour of the successful bidder no objection from the Respondent is necessary. The stand adopted by the Respondent in correspondence addressed to the Receiver was that she was required to give no objection certificate, if necessary. According to her it is not necessary for her to issue no objection for the successful bidder to get the licence. This stand was taken despite the letter dated 14th July, 2004 from the Joint Director, copy of which is at Exh.F to this petition, which shows that submission of no objection from the Respondent would be necessary for grant of licence in favour of the Petitioner. The letter clearly says that the Petitioner shall submit no objection from the Respondent.

3. It appears that thereafter the court receiver put a report before the court. The court disposed of that report by order dated 28th July, 2004. The court found that matter in dispute is between the parties and therefore the court receiver should leave the parties to sort out their differences. Thereafter, it appears that not only the Respondent has not issued the no objection certificate but she moved the Receiver for taking action against the Petitioner because he was carrying on business of blood bank without getting licence in his own name. It appears that, the licence to run the blood bank stood in the name of the firm. As the agent of the receiver, to run the blood bank the Petitioner needed licence in his own name. To get a licence in his own name he needs no objection from the Respondent. Because the Respondent did not issue no objection, the petitioner was forced to conduct the blood bank on the basis of the licence issued in favour of the firm. By withholding the no objection, the Respondent was forcing the Petitioner to conduct the business on the basis of the licence of the firm and at the same time she was asking the Receiver to take action against the Petitioner for not getting the licence in his own name.

4. The learned Counsel appearing for the Petitioner submits that ultimately a chamber summons was taken out before the court for direction to the Respondent to issue no objection certificate and it is at that time that the Respondent issued no objection certificate in September, 2005.

5. The Respondent has filed reply in this contempt petition after show cause notice was served on her. The stand taken by the Respondent is that she did not issue no objection certificate because as per the order of the court no objection certificate was to be issued only if it is necessary and according to her in law she was not required to issue no objection certificate for enabling the highest bidder to get the licence in his own name. At the hearing there was also a contention raised that though the petition was admitted for final hearing no show cause notice was issued to the Respondent.

6. I have heard the learned Counsel for both sides. The order of which disobedience is alleged is an order made by consent of both the parties. The relevant paragraph of the order is paragraph 3, which

reads as under:-

3. In this view of the matter, therefore, considering the nature of the business namely a Blood Bank, which the firm is carrying on, the Receiver will have to be appointed. Therefore, the Court Receiver of this court is appointed as a Receiver of the assets, book of accounts, bank accounts, premises, business, etc. including those listed in Exh.F. It is further directed that the Court Receiver shall call bids from the partners i.e. the Petitioner and the Respondent for the purpose of fixing royalty. The highest bidder shall be appointed by the Receiver as his agent. The agent shall execute the agency agreement on usual terms and conditions. It is clarified that the Receiver shall not insist on furnishing security from the agent. The successful bidder shall be entitled to carry on the business on the basis of licence issued in the name of the firm, but the successful bidder will have to produce before the Receiver within a period of four weeks from today necessary licence obtained by the

successful bidder. It is clarified that other party who is not successful bidder shall issue necessary no objection certificate in favour of the successful bidder for getting necessary licence for running the Blood Bank.

7. Perusal of the above quoted order shows that there was a clear direction issued by the court that of the two partners, the partners who is not the successful bidder shall issue no objection certificate in favour of the successful bidder so that the successful bidder can get the licence for running the blood bank. Pursuant to this order bidding was held before the Receiver on 23-6-2006. The Petitioner was the highest bidder. The Respondent participated in that meeting, but she could not match the bid given by the Petitioner. The minutes of the meeting dated 23-6-2003 have been recorded by the Receiver. In those minutes the Receiver has stated thus:

Since the petitioner is required to give No Objection for issuance of Licence as per the aforesaid Order, the Advocate for the Petitioner on instructions from his client

states that after the Respondent deposits the amount of royalty as stated hereinabove, the Petitioner will give No Objection to the Respondent as per the aforesaid order.

8. Thus a clear statement was made by the advocate appearing for the Petitioner, after taking instructions from the Respondent who was present, that as soon as the amount of royalty is deposited as agreed, no objection certificate as per the order quoted, dated 18-6-2003 will be issued. It appears that it is only thereafter the Respondent started having second thought and now her stand was that she will not issue no objection certificate because according to her the law does not require any no objection certificate. In my opinion, in view of the statement made by the Respondent before the Receiver quoted above, she was not entitled to take such a stand and she was not justified in taking such a stand. Thus, the stand was taken by her with only intention to harass the Petitioner. It resulted in flouting the order made by the court with her consent that she will issue no objection certificate in favour of the Petitioner and ultimately she obeyed the order in September, 2005 only on finding that

there is no escape available. What is to be noted here is that not only the Respondent was unjustifiably refusing to issue no objection certificate, but she was making complaints before the Receiver that because the successful bidder has not obtained the licence in his own name, action should be taken against him, though the fact remains that the reason why the Licensing Authority was not issuing fresh licence in favour of the successful bidder, was because the Respondent was not issuing no objection certificate. That position is absolutely clear from the letter of the Joint Director of the Licensing Authority at Exh.F. What is significant is that though the Respondent took the stand that it is not necessary for her to issue NOC, at no point of time even an attempt has been made to explain the statement made in the meeting before the Receiver on 23-6-2003 which is quoted above. In my opinion, unless the Respondent gives a valid explanation about the statement which is voluntarily made by the Petitioner, she was not entitled to take any stand other than the one which was taken before the Receiver. Absolutely untenable stand was taken by the Respondent only to flout and disobey the order made by this court.

9. The Respondent has tendered an apology. But in my opinion, that apology is neither genuine nor heart felt. Unless and until the Respondent explains successfully why she took the stand different from the one which was taken by her before the Receiver on 23-6-2003, the apology tendered by the Respondent cannot be termed as genuine or heart felt. All the attempt of the Respondent was to flout the order of the court to harass the Petitioner only because he had given a bid higher than the Respondent. In my opinion, therefore, the Respondent has clearly willfully and deliberately violated the order made by this court which was made by her own consent, and therefore, she is liable to be punished.

10. The Respondent has not stopped at taking any impossible stands in the reply. At the argument it was the contention that though the matter is fixed for hearing, I cannot hear the matter finally because show cause notice was not served to the Respondent. I have perused the record. On the record there is actually a copy of show cause notice which was issued to the Respondent and was served to the Respondent. What is pertinent is that the Respondent has herself

filed an affidavit dated 12-9-2005, wherein in paragraph 4 she states that "In the circumstances, I pray that the show cause notice be discharged." If the show cause notice was not actually served on the Respondent, there is no question of her praying for discharge of the show cause notice.

11. So far as the aspect of sentence is concerned, the learned Counsel appearing for the Respondent submitted that the Respondent is a lady, her husband is retired and that she has school going children. He also submitted that if a jail sentence is imposed on the Respondent she may also lose her job.

12. In my opinion, the fact that the Respondent is a lady and she has two school going children should have been considered by the Respondent herself before defying the order of the court. Because the court has been taking a lenient view where the litigant flouts the order of the court, I find that the tendency of the litigants to disregard the order of the court to take advantage of the delays of the system is increasing. In my opinion, therefore, when the court finds that there is a deliberate violation of the court's order, this aspect has to be

considered by the court while imposing punishment. The fact remains that if the Respondent is sent to jail for a long time, her children may suffer. In my opinion, there can be no two opinion in this case that the Respondent has deliberately violated the order made by this court and therefore she is guilty of having committed contempt of this court.

13. So far as the aspect of sentence is concerned, considering that the Respondent has two school going children, in my opinion, simple imprisonment for seven days would meet the ends of justice. The Respondent is also directed to pay fine of Rs.2000/-. The Respondent is also directed to pay costs of this petition. Considering the nature of the controversy between the parties, and the fact that the Respondent took the stand referred to above to harass the Petitioner. in my opinion, it would be appropriate to impose exemplary costs on the Respondent. Costs are , therefore, quantified at Rs.25,000/-. The amount of fine and costs is directed to be paid within a period of four weeks from today.

14. At the request of the learned Counsel appearing for the Respondent, that part of the order which

imposes sentences on the Respondent is stayed for a period of six weeks from today.

. Petition disposed of.

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